IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.P.No.45432 of 2006

The Music Academy Madras
rep. By its Trustee
Mr.C.V.Karthik Narayanan
No.306, TTK Road
Royapettah, Chennai-14. .. Petitioner

Vs

1. The Commissioner
   Corporation of Chennai
   Rippon Buildings, Park Town
   Chennai-600 003.

2. Kamalakshi Ammal

3. R.Padmini

4. The Chennai Metropolitan
   Development Authority
   rep. By its Member Secretary
   Egmore, Chennai-8. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Mandamus as stated therein.

For Petitioner : Mr.C.Ramakrishna, Sr.Advocate
for M/s.K.Viswanath

For Respondents: Mr.G.T.Subramanian
for 1st respondent

Mr.K.P.Ashok
for respondents 2 and 3

Mr.J.Raveendran
for 4th respondent

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ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner has preferred this writ petition seeking a writ of Mandamus directing the first respondent to demolish the unauthorised superstructure erected by respondents 2 and 3 situated in Door New No.168, T.T.K.Road, Royapettah, Chennai 600 014 on the land belonging to them and further direct respondents 1 and 4 to take appropriate action in accordance with law in respect of the premises measuring 16 feet x 15½ feet illegally occupied by respondents 2 and 3 at the North Eastern corner of their premises at Door No.306, T.T.K.Road, Royapettah, Chennai 600 014 thereby permitting the widening of the gate on the land where there is now an unauthorised construction by respondents 2 and 3 thereby ensuring easy ingress and egress to enable free flow of traffic in and out of their property and on T.T.K.Road.

2. When the above matter came up for admission on 27.11.2006, this Court ordered notice to the respondents through Court as well as privately returnable by 6.12.2006. Concededly, all the respondents have received the notice and the first respondent was represented by the Standing Counsel. But, respondents 2 to 4 remained exparte, in spite of receipt of notice.

3. On 13.12.2006, this Court, after taking note of the facts and circumstances of the case and the submissions made by the learned counsel, expressed anguish on the inaction on the part of respondents 1 and 4, as it was observed by the first respondent Corporation itself that, even though respondents 2 and 3 have put up unauthorised construction without obtaining planning permission, action against them would be initiated only after the final decision of the Chennai Metropolitan Development Authority on the regularisation proposal submitted by respondents 2 and 3. This Court, on 13.12.2006, directed respondents 1 and 4 to take immediate action against respondents 2 and 3, who remained exparte on 13.12.2006 and report to this Court on 18.12.2006 about the action taken in the light of the above direction, dated 13.12.2006, which reads as follows:

> " ... 3. After careful perusal of the affidavit as well as the relevant papers filed in support of the above writ petition and hearing the submissions made by the learned counsel in this regard, we are satisfied that the matter has reached a finality, as the claim of respondents 2 and 3 under Section 9 of the Tamil Nadu City Tenants' Protection Act had already got adjudicated and rejected vide orders of

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this Court, dated 27.11.1979 made in CRP No.1410 of 1978; and dated 7.12.1982 made in CRP No.4 of 1982, and the order of the Supreme Court dated 25.4.1988 made in SLP No.4626 of 1983.

4. Thereafter, the petitioner filed W.P.No.9031 of 2002 seeking a writ of Mandamus directing the first respondent to demolish the unauthorised superstructure erected by respondents 2 and 3 situated in No.307, Mowbrays Road, Royapettah, Chennai 600 014 in the land belonging to them and directing respondents 2 and 3 to deliver and hand over the vacant land after demolishing the building measuring 16 feet x 15½ feet illegally occupied by respondents 2 and 3 at the North-Eastern corner of their premises at Door No.306, TTK Road, Royapettah, Chennai 600 014 for the purpose of opening another gate for easy ingress and exist for free flow of traffic, which is an identical prayer as in the present writ petition. This Court, by order dated 18.3.2002, disposed of the said writ petition, with the following direction:

> "In the circumstances, no positive direction can be granted by this Court at this stage. The only thing which can be done is to direct the petitioner herein to make a complaint to the first respondent, if it so chooses. If the petitioner makes a complaint or representation to the first respondent pointing out the specific violations, committed by respondents 2 and 3, the first respondent shall, after issuing notice to both the petitioner and respondents 2 and 3, enquire into the same and then taken suitable action as expeditiously as possible. If the complaint or representation is filed within one week from today, then within two months thereafter the first respondent shall enquire into the same by giving opportunity to either party and then take suitable action in accordance with law."

5. It appears that, pursuant to a complaint preferred by the petitioner dated 29.3.2002, as per the directions of this Court dated 18.3.2002 made in W.P.No.9031 of 2002, an enquiry was conducted on 12.7.2002 and finally, the first respondent Corporation informed the petitioner that the action against the unauthorised superstructure put up by respondents 2 and 3 could be initiated only after the final decision of the Chennai Metropolitan Development Authority on the regularisation proposal submitted by respondents 2 and 3, as admittedly respondents 2 and 3 have put up unauthorised construction without obtaining planning permission from the Corporation of Chennai.

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6. Contending that neither the first respondent nor the fourth respondent had taken any action pursuant to the earlier order of this Court dated 12.7.2002, the petitioner has filed the present writ petition.

7. Unfortunately, even after receipt of private notice, the fourth respondent has not chosen to appear before us today.

8. In W.P.Nos.25825 and 25826 of 2006, wherein construction was put up by the petitioner therein without obtaining the planning permission, the first Bench of this Court, by order dated 23.8.2006, after referring to the decisions of the Apex Court in FRIENDS COLONY DEVELOPMENT COMMITTEE v. STATE OF ORISSA (2004 (8) SCC 733), M.I.BUILDERS PVT. LTD. v. RADHEY SHYAM SAHU AND OTHERS (1999 (6) SCC 464), RAM AWATAR AGARWAL v. CORPORATION OF CALCUTTA (1999 (6) SCC 532), PRATIBHA CO-OPERATIVE HOUSING SOCIETY LTD. AND ANOTHER v. STATE OF MAHARASHTRA AND OTHERS (AIR 1991 SC 1453) and SALAHUDEEN BABU v. P.T.PRABHAKAR (2005 (1) CTC 385), directed the respondent therein to demolish the building and also granted police protection for demolition work.

9. In our considered opinion, such deliberate unauthorised constructions do not deserve to be condoned and compounded. Compounding of unauthorised constructions should not be encouraged by way of regularisation nor permitted to continue. In the instant case, there is no question of considering whether the impugned construction put up would be regularised or not, as the right of the petitioner is not disputed, but, in fact, fortified in view of the decisions of this Court (i) dated 27.11.1979 made in CRP No.1410 of 1978; and (ii) dated 7.12.1982 made in CRP No.4 of 1982, and the order of the Supreme Court dated 25.4.1988 made in SLP No.4626 of 1983.

10. When, in clear terms, it is stated by the first respondent Corporation himself that action against the unauthorised superstructure put up by respondents 2 and 3 could be initiated only after the final decision of the Chennai Metropolitan Development Authority on the regularisation proposal submitted by respondents 2 and 3, as admittedly, respondents 2 and 3 have put up unauthorised construction without obtaining planning permission from the Corporation of Chennai, we fail to understand the inaction on the part of respondents 1 and 4.

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Under such circumstances, we direct respondents 1 and 4 to take immediate action against respondents 2 and 3, who remain exparte in the present writ petition and report to this Court on 18.12.2006 about the action taken in the light of the above direction."

4. Heard Mr.K.P.Ashok, learned counsel appearing for respondents 2 and 3, and Mr.J.Raveendran, learned counsel appearing for the fourth respondent.

5. Mr.K.P.Ashok, learned counsel appearing for respondents 2 and 3 could not satisfy this Court that the superstructure erected by them is an authorised one. On the other hand, Mr.J.Raveendran, learned counsel appearing for the fourth respondent submitted that the fourth respondent is not going to regularise any unauthorised construction put up by respondents 2 and 3, and in fact, there is no application preferred by respondents 2 and 3, which is pending before them.

6. As already observed in the order dated 13.12.2006, the First Bench of this Court, by order dated 23.8.2006 made in W.P.Nos.25825 and 25826 of 2006, wherein construction was put up by the petitioner therein without obtaining the planning permission, after referring to the decisions of the Apex Court in FRIENDS COLONY DEVELOPMENT COMMITTEE v. STATE OF ORISSA (2004 (8) SCC 733), M.I.BUILDERS PVT. LTD. v. RADHEY SHYAM SAHU AND OTHERS (1999 (6) SCC 464), RAM AWATAR AGARWAL v. CORPORATION OF CALCUTTA (1999 (6) SCC 532), PRATIBHA CO-OPERATIVE HOUSING SOCIETY LTD. AND ANOTHER v. STATE OF MAHARASHTRA AND OTHERS (AIR 1991 SC 1453) and SALAHUDEEN BABU v. P.T.PRABHAKAR (2005 (1) CTC 385), directed the respondent therein to demolish the building and also granted police protection for demolition work, and the said view is also upheld by the the Apex Court.

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Under the facts and circumstances of the case and in view of the well settled proposition of law, except to direct the first respondent to proceed further in the matter, in terms of the order of the First Bench of this Court dated 23.8.2006 made in W.P.Nos.25825 and 25826 of 2006, referred to above, no further orders are required in this petition. This writ petition is disposed of accordingly. No costs. Consequently, M.P.No.1 of 2006 is closed.

sasi

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1. The Commissioner
   Corporation of Chennai
   Rippon Buildings, Park Town
   Chennai-600 003.

2. The Member Secretary
   Chennai Metropolitan
   Development Authority
   Egmore, Chennai-8.

+ one cc to Mr. G.T. Subramanian, Advocate sr no. 63220
+ 2ccs to Mr. K.P. Ashok, Advocate sr no. 63213
+ one cc to Mr. K. Viswanath, Advocate sr no. 63203
+ one cc to Mr. J. Ravindran, Advocate sr no,. 63287

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